



DEPARTMENT OF THE ARMY
OFFICE OF THE ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY
9301 CHAPEK ROAD
FORT BELVOIR VA 22060-5527

October 23, 2019

SAAA-LS

T.J. Kenney
MuckRock News
DEPT MR 55904
411A Highland Avenue
Somerville, MA 02144
Sent via email: 55904-52897242@requests.muckrock.com

Dear Mr. Kenney:

This letter responds to your Freedom of Information Act (FOIA) request dated June 9, 2018. Your request was referred to this office by the Department of the Army Office of the Inspector General. Your request was assigned our office tracking number FA-19-0090. You seek the following information restated below. Please be advised, the Department of the Army FOIA Program is decentralized, therefore this office is responding only to items 1 and 4; since those are the only items that fall under our purview.

1. Copies of all performance appraisals of Joseph F. Guzowski (Guzowski) as Principal Director to the Inspector General for Inspections (PDTIGI);
2. Copies of all Army IG records about Guzowski from prior to his service as PDTIGI;
3. Copies of all records approved or disapproved by Guzowski pertaining to Equal Opportunity (EO) and Sexual Harrassment/Assault Response and Prevention (SHARP) programs at any echelon;
4. Copies of any correspondence between Guzowski and the Office of the Deputy Assistant Secretary of the Army for Diversity and Leadership (DASA(D&L));
5. Copies of all records signed or authenticated by Guzowski which approved or disapproved release of IG records outside IG channels, the use of IG records as the basis for an adverse action, the factual amendment of IG records, or the reconsideration of IG determinations, findings, opinions, judgements, or conclusions;
6. Copies of all Army Regulation (AR) 15-6 Report of Investigation (ROI) files where Guzowski served as the Appointing Authority; and
7. Copies of all AR 735-5 Financial Liability for Property Loss (FLIPL) ROI files where Guzowski served as the Appointing Authority and/or Approving Authority.

Pertaining to item 1, we are withholding in full the records that are responsive to your FOIA request. All withholdings have been made pursuant to Exemption (b)(6) of the FOIA, as described below. In regard to item 4, our office requested a records search from the Office of the Deputy Assistant Secretary of the Army for Diversity and Leadership (DASA(D&L)). That office conducted a search and review for any records responsive to your FOIA request; however, this search failed to yield responsive records pertaining to item 4 of your request. Under the FOIA, a government agency is required to make a "good faith effort to conduct a search" 5 USC 552(a)(3)(A). We have determined this search was a good faith effort and was reasonable. See *Duenas Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 3154 (D.C. Cir. 2003).

Exemption 6 of the FOIA 5 U.S.C. § 552(b)(6)

Exemption (b)(6) of the FOIA protects from mandatory disclosure "personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of privacy." 5 U.S.C. § 552(b)(6) (2011). To qualify for protection under Exemption (b)(6), records must meet two criteria: (1) they must be "personnel and medical files and similar files," (2) the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." *Id.*; *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599-603 (1982). The first prong is met if the information "appl[ies] to a particular individual" and is "personal" in nature. *New York Times Co. v. NASA*, 852 F.2d 602, 606 (D.C. Cir. 1988). The second prong requires courts to strike a "balance between the protection of an individual's right to privacy and the preservation of the public's right to government information." *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982). The "public interest" in the analysis is limited to the "core purpose" for which Congress enacted the FOIA: to "shed . . . light on an agency's performance of its statutory duties." *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

Mr. Kenney, you are requesting to obtain third-party information, specifically, DD Form 2899, AUG 2009, Department of Defense Executive Pay and Performance Appraisal. This document is contained in the third party's personnel file, retrievable by the third party's name and Department of Defense Identification Number, and is maintained in a Privacy Act protected system of records. The applicable system of records notice is DPR 34 DoD, Defense Civilian Personnel Data System.

The Privacy Act provides that, "[n]o agency shall disclose any record...except pursuant to a written request by or with the prior written consent of the individual to whom the record pertains, unless an exception applies." This is commonly known as the "no disclosure without consent" rule. In this case, the subject of the requested Privacy Act document (Joseph Guzowski) has not requested or consented to the release of the information, and none of the twelve Privacy Act exceptions apply. Of note, 5 U.S.C. § 552a (b)(2) (required FOIA disclosure) does not apply. The requester must establish that disclosure is in the public interest by showing that the "public interest sought to be advanced is a significant one," and that "the information sought is likely to advance that interest." Since the public interest in the disclosure of this information

would not contribute significantly to the public understanding of the operations or activities of the government and does not outweigh the subjects' privacy interest in nondisclosure of such information, the Privacy Act does not grant you a right of access to this information. Your request that third party information be released to you serves to reinforce the privacy harm that may result from any subsequent release, which the Privacy Act was designed to protect.

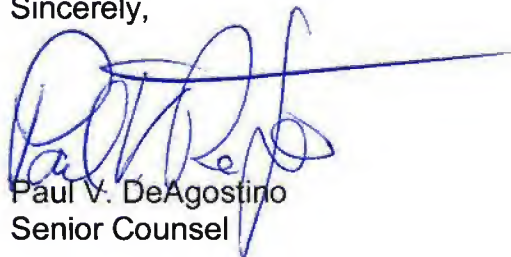
For any further assistance and to discuss any aspect of your request, you have the right to contact the Army FOIA Public Liaison Officer, Alecia Bolling, by email at us.army.hqda-oaa-ahs.mbx.rmda-foia-public-liaison@mail.mil or by phone at (571) 515-0306. Additionally, you may contact the Office of Government Information Services (OGIS) at the national Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email at ogis@nara.gov, telephone number (202) 741-5770 toll free at (877) 684-6448 or by facsimile at (202) 741-5769.

This letter constitutes both a full denial and "no record" determination and has been made by the undersigned on behalf of the Administrative Assistant to the Secretary of the Army, who has designated that this office act as the Initial Denial Authority for records maintained by the Office of the Secretary of the Army and its serviced activities. You have the right to file an administrative appeal with the Office of the Army General Counsel within ninety (90) calendar days. See 32 C.F.R. § 518.17(c). Their mailing address is:

Department of the Army
Office of the General Counsel
104 Army Pentagon, Room 2E724
Washington, D.C. 20310

If you have any questions regarding this letter or the information furnished, please contact this office at (703) 614-5871 or email at usarmy.belvoir.hqda-oaa-rpa.mbx.oaa-cals-mailbox-foia@mail.mil. In all correspondence please refer to FOIA number FA-19-0090.

Sincerely,



Paul V. DeAgostino
Senior Counsel

